Tentative Opinion
June 30, 2020 Calendar
Division 8

B295935 – Pico Neighborhood Association et al. v. City of Santa Monica

We have received a request for oral argument. Here is a summary of the court's tentative opinion.

We are inclined to reverse.

Our tentative view is the trial court misinterpreted the statute, which seems to impose a dilution element Pico failed to prove. We independently review issues of statutory interpretation.

The California Voting Rights Act seems to require plaintiffs to satisfy five elements to make out a claim:

1. Protected class;
2. Resident;
3. At-large voting;
4. Racially polarized voting; and
5. Dilution.

Protected class. Element one apparently requires plaintiffs to prove membership in a protected class. (Elec. Code, §§ 14032 [stating this element], 14026, subd. (d) [defining protected class].) A protected class is a class of voters who are members of a race, color, or language minority group, as defined in the federal Voting Rights Act (52 U.S.C. § 10301 et seq.). (Elec. Code, § 14026, subd. (d).)

Resident. Element two apparently requires plaintiffs to prove they reside in the political subdivision they are suing. (Elec. Code, §§ 14032 [stating this element], 14026, subd. (c) [defining political subdivision].) A political subdivision is a geographic area of representation created for the provision of government services, and includes general law cities and charter cities. (§ 14026, subd. (c).)

At-large voting. Element three apparently requires plaintiffs to prove the political subdivision used an at-large method of electing members to the governing body of the political subdivision. (Elec. Code, §§ 14027 [stating this element], 14026, subd. (a) [defining at-large method of election].) At-large voting includes any of the following election methods: (1) one in which voters of the entire jurisdiction elect members to the governing body; (2) one in which candidates must reside in given areas of the jurisdiction and voters of the entire jurisdiction elect members to the governing body; and (3) one that combines at-large elections with district-based elections. (§ 14026, subd. (a).)

Racially polarized voting. Element four apparently requires plaintiffs to prove racially polarized voting occurred in the political subdivision's elections. (Elec. Code, §§ 14028 [stating this element] & 14026, subd. (e) [defining racially polarized voting].) Racially polarized voting is voting in which a protected class's electoral preferences are different from those of the rest of the electorate in a legally significant way. (§ 14026, subd. (e).)

Dilution. Element five apparently requires plaintiffs to prove the political subdivision's at-large election method impaired "the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the *dilution* or the abridgment of the rights of voters" who belong to a protected class. (Elec. Code, § 14027, italics added.)

This case seems to turn on element five, which is the dilution element.

Our tentative view is the dilution element required Pico to prove the City's at-large method impaired Latinos' ability to elect candidates of their choice or to influence the outcome of an election as a result of the *dilution* or the abridgment of Latino voting rights.

We focus on the word dilution, as does Pico. In defending its trial court victory, Pico in its brief to us uses some form of the word *dilution* 46 times. It uses a form of the word abridgement only once, and in passing. We therefore focus on the issue Pico has posed.

The Legislature decided to leave the word "dilution" undefined. The Legislature thus delegated to the judiciary the task of defining "dilution."

Dilution is a familiar word with a plain meaning. Dilution is the act of making something weaker. Pouring a quart of water into a quart of milk, for instance, dilutes the milk to half strength. Diluting the milk weakens its nutritional value.

This familiar concept applies to electoral results.

Many techniques can manipulate a voting system to dilute the ability of particular groups to achieve electoral success. Both district voting and at-large voting can be mechanisms of mischief.

In a district voting system, for instance, one can draw district lines to divide a group's supporters among multiple districts so they fall short of a majority in each district. This is "cracking." (*Gill v. Whitford* (2018) 138 S.Ct. 1916, 1923–1924; cf. *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 769 [County in 1981 intentionally fragmented Hispanic population among the various districts to dilute the Hispanic vote].)

Or one can draw district lines to concentrate a group into a few districts so the group wins there by overwhelming margins but achieves less overall success than if different line-drawing spread the group more evenly through a larger number of districts. This is "packing." (*Gill v. Whitford*, *supra*, 138 S.Ct. at pp. 1923–1924; cf. *Georgia v. Ashcroft* (2003) 539 U.S. 461, 470, 481, 486, 487, 488 [explaining packing and unpacking].)

At-large elections are another possible method for diluting voting power and curbing electoral success, under particular conditions. At-large voting can serve legitimate ends and for that reason is not a per se violation of minority voting rights. (*Thornburg v. Gingles* (1986) 478 U.S. 30, 48.) But under certain circumstances it is possible to weaken a group's electoral success by using at-large voting instead of district voting.

A hypothetical example illustrates the point.

In this hypothetical we speak generally in terms of groups, because the groups in electoral cases often are political parties rather than express racial or ethnic groups. This statute is drafted specifically in terms of racial, color,

and language groups, but the mechanisms of voting dilution are general and extend beyond these categories.

For our hypothetical, assume everyone votes strictly according to group membership and, if possible, only for candidates who are members of their own group. Further assume one group has voting power of only 10 percent in a given city but, within that city, the group's voting power in neighborhood X is 60 percent. If neighborhood X were a voting district, the group could elect one of its own members as a district representative. The 60 percent neighborhood voting power would guarantee success. But now switch to at-large voting. This switch defeats the group's ability to elect anyone from its own ranks, because 10 percent is not enough to win. Changing from district to at-large voting under these circumstances would weaken that group's electoral success: the change would deny it the ability it previously had to elect a member of its own group.

This hypothetical example shows that, with district voting, the group could elect one representative belonging to its group. But with at-large voting, the group could not elect anyone from its own group. Going from one representative to zero would dilute this group's ability to elect candidates from its group. Under these circumstances, an at-large system has diluted the group's voting power in a politically damaging way: the group lost the power to elect a representative of their choice.

The possibility of dilution does not mean it is generally wrong for voters in a minority to lose an election. Generally speaking, democracy is majority rule. Under ideal conditions in a democracy, the majority of voters tends to win and the minority of voters tends to lose. When candidates or causes lose elections simply because too few voters support them, that is not democracy failing. That is democracy working.

The dilution element thus must do the work of distinguishing between the general case, when majority rule is proper, and the special case, when some mechanism has improperly diluted minority voting power.

Our tentative opinion is Pico offered no valid proof of dilution.

One cannot speak of the dilution of the value of a vote until one first defines a standard as to what a vote should be worth. Justice Frankfurter made this point in his long and bitter dissent from the landmark decision in *Baker v. Carr* (1962) 369 U.S. 186, 300 (Frankfurter, J., dissenting).) Frankfurter thought his point was a reason to reject that decision, but the case law in its wake accepted his wisdom and built it into a standard litigation practice. (E.g., *Reno v. Bossier Parish School Bd.* (1997) 520 U.S. 471, 480 [the concept of vote dilution necessitates the existence of an undiluted practice against which the fact of dilution may be measured, so plaintiffs must postulate an alternative voting practice to serve as the benchmark undiluted voting practice].)

Pico agrees it was its burden to postulate a reasonable alternative voting practice to serve as the undiluted benchmark. Pico proposed a district system that, for one district within the City, would have 30 percent Latino voting power, as compared to the 14 percent city-wide voting power Latinos hold in at-large elections.

Pico's showing seems insufficient. Our tentative view is Pico failed to prove the City's at-large system diluted the votes of Latinos. Assuming race-based voting, 30 percent is not enough to win a majority and to elect someone to the City Council, even in a district system. It would seem there was no dilution because the result with one voting system is the same as the result with the other: no representation.

We tentatively believe Pico failed to show the at-large system was the reason Latinos have had trouble getting elected to the City Council. If one assumes groups vote only for candidates from their own group—as is Pico's premise for this suit and the Act's application—then the reason for Latinos' lack of electoral success in Santa Monica would appear to be that there are too few Latinos to muster a majority, no matter how the City might slice itself into districts or wards. At-large voting would not seem to be to blame. Small numbers would.

Perhaps the same holds true for other minorities in Santa Monica. Pico's briefing, however, gives us little data about other groups and their electoral histories in Santa Monica.

Pico responds with two arguments. We call these Argument One and Argument Two.

Pico's Argument One is the Act contains no dilution element at all. In its 95-page brief, Pico devotes only one sentence to this argument. An amicus brief also argues this point.

Pico claims a showing of racially polarized voting under section 14028 completely satisfies and thus supplants the dilution element in section 14027. Pico quotes the first sentence of subdivision (a) of section 14028: "A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision."

Pico thus contends the word "dilution" in section 14027 has no content independent of subdivision (a) of section 14028.

Two problems seem to invalidate this argument: statutory text and the rule against surplusage. The correct interpretation of the Act would seem to be that racially polarized voting is a necessary but not sufficient element. Another separate and necessary element seems to be dilution.

The first problem is statutory text, which is paramount and seems contrary to Pico's argument. Three sections apparently require plaintiffs to satisfy *both* the dilution element of section 14027 and section 14028's requirement of racially polarized voting. The three sections containing this apparently-decisive language are sections 14032, 14029, and 14030.

Section 14032 of the Act grants a private right of action to any voter in a protected class who resides in a political subdivision where a violation of Sections 14027 *and* 14028 is alleged. Section 14029 also is compelling, as plaintiffs gain remedies only by establishing a violation of both 14027 *and* 14028. Section 14030 follows the same pattern for attorney fees and costs.

In sum, the Legislature seems to have required litigants to establish both dilution *and* racially polarized voting to gain a claim, to have a remedy, and to recover fees.

A second and independently fatal difficulty with Pico's argument would seem to be the rule against surplusage. If the Legislature had intended the result Pico urges, it would have not included the word "dilution" in the Act. But it did, which seems to defeat Pico's argument.

Pico seems to argue the statutory word "dilution" is mere surplusage. Surplusage in legislation is unusual and disfavored. The venerable assumption is drafters avoid surplusage and therefore so should judges who interpret the drafting. (E.g., *Market Co. v. Hoffman* (1879) 101 U.S. 112, 115–116; *People v. Leiva* (2013) 56 Cal.4th 498, 506.)

In sum, our tentative opinion is to avoid reading the Act to say a mere showing of racially polarized voting necessitates a finding a city has misapplied at-large voting. According to the statute, plaintiffs apparently must show dilution, in addition to racially polarized voting.

Pico's Argument Two is its "influence" argument. Pico argues the change from 14 percent to 30 percent is legally significant because it increases the electoral "influence" of Latinos. The Legislature added the word "influence" to section 14027 of the Act but did not define it. Pico proposes a definition of this word that would seem to give a cause of action to any group, no matter how small, that can draw a district map that would improve its voting power by any amount, no matter how miniscule.

Our tentative opinion is Pico's proposal in Argument Two would create absurd results and thus is untenable.

A hypothetical illustrates our tentative analysis.

Assume three facts: there are 3,000,000 voters in a city; 3,000 belong to a small group G; and all voters are polarized in the sense voters will vote only for candidates of their own group, as Pico argues. This is not a crazy or extreme hypothetical. It flows from the city in which this court sits.

In an at-large election, group G would constitute 0.1 percent of the electorate. Suppose we now switch from at-large voting to voting in 15

districts, each with 200,000 voters, and we draw the lines to maximize the voting power of group G. Now one district incorporates all 3,000 voters of group G. Thus group G would increase its voting power from 0.1 percent strength at large to 1.5 percent in that district. A change to 1.5 percent is a 15-fold increase, which seems sizeable in relative terms. This change would improve G's "influence" as Pico seems to define the term. But a group with a vanishingly small numerical presence—be it .01 percent or 1.5 percent—can have no practical numerical influence in any voting system. There are simply too few voters in group G to be numerically effective in an environment of group-based voting.

To define "influence" as Pico proposes would seem merely to ensure plaintiffs always win.

Pico cites the case of *Georgia v. Ashcroft*, *supra*, 539 U.S. at pages 470–471, 482. *Georgia v. Ashcroft* seems inapposite in many ways. It interpreted section five of the federal Voting Rights Act, not section two. These different sections combat different evils and, accordingly, impose different duties. (*Id.* at p. 478.) Section five deals with "retrogression," *id.* at p. 477, which is not a subject of the California Voting Rights Act. And *Georgia v. Ashcroft* merely held a trial court failed to consider all relevant factors when examining whether a redistricting plan would diminish minority voters' effective exercise of the electoral franchise. (*Id.* at p. 485.) It did *not* hold groups will influence elections at the 30 percent level but not at the 14 percent level. The holding in *Georgia v. Ashcroft* does not seem to assist Pico. (See *Bartlett v. Strickland* (2009) 556 U.S. 1, 19–20 [a party asserting § 2 liability must show the minority population in the potential election district is greater than 50 percent] (plur. op. of Kennedy, J.).)

The City notes some "influence" claims in theory could be valid if evidence showed a near-majority of minority voters in a hypothetical district would often be sufficient for the minority group to elect its preferred candidates. Our tentative view is the City is right: we need not decide that question today, for this case presents no such district.

We now turn to the constitutional question.

Our preliminary view is the trial court applied the wrong legal rule. We independently review this question of law. (*Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 932.) This analysis does not require us to resolve disputed facts.

No eyewitnesses (apart from Antonio Vazquez, whom Pico never questioned about discriminatory intent) testified to the crucial events in this case. Rather, direct evidence about the key events came from three types of historical artifacts: (1) 1946 newspaper excerpts, voting records, and the proposed charter; (2) the 1992 Charter Review Commission report; and (3) the July 7, 1992 City Council meeting video. These artifacts are the core of record for the equal protection analysis. These artifacts were not created for purposes of litigation.

We tentatively believe we independently review trial court findings based on historical artifacts like videotapes. (See *Scott v. Harris* (2007) 550 U.S. 372, 380 (*Scott*) [appellate judges interpret "what we see on the video" for themselves: no deference]; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 677 ["Because the trial court's findings were based solely upon documentary evidence, we independently review the record."].)

We are in the same position as the trial court was to evaluate materials like the 1946 newspaper clippings, the 1992 commission report, and the 1992 video. Cold historical artifacts seem to differ from the live witness testimony in a case Pico cites: *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925–928. Deference to factual findings stems from the fact finder's ability to observe the demeanor of live witnesses and their manner of testifying. (*In re Avena* (1996) 12 Cal.4th 694, 710.) That deference seems inappropriate when evidence does not involve the credibility of live testimony. (*In re Resendiz* (2001) 25 Cal.4th 230, 249; see also *People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 79 [no deference to trial court's conclusion about written documents because trial and appellate courts were in same position in interpreting that evidence].)

Experts in this case testified about these written and video artifacts, but that seems irrelevant. Appellate courts are not required to defer to

expert opinion regarding the ultimate issue in a case. (*Vergara v State of California* (2016) 246 Cal.App.4th 619, 650.) "Expert" opinion about how a court should interpret a 1992 video, for instance, seems simply to be partisan advocacy in the guise of evidence; this type of "expert" testimony would seem to boil down to argument, not evidence. Courts apparently said so long ago. (*Winans v. New York & Erie R.R.* (1858) 62 U.S. (21 How.) 88, 101 [courts cannot receive professors to prove to the court the proper or legal construction of instruments of writing; experience has shown that opposite opinions of persons professing to be experts may be obtained to any amount].)

An inquiry into the purpose of the challenged conduct is essential. A showing of a racially disproportionate impact alone is insufficient. Discriminatory *purpose* requires more than *knowledge* of consequences. (*Personnel Administrator of Massachusetts v. Feeney* (1979) 442 U.S. 256, 279 (*Feeney*).) It implies the decision maker selected or reaffirmed a particular course of action not in spite of adverse impact on a group, but because of that impact. (*Ibid.*)

This careful distinction between purpose and knowledge is familiar in the law. A considerable accomplishment of the American Law Institute—perhaps its most considerable—was its precise definition of mental states in the Model Penal Code more than 50 years ago. (See Model Pen. Code, § 2.02, subd. (2).) The Model Penal Code's definitions of purpose and knowledge perfectly fit the distinction *Feeney* drew.

People act *purposely* to achieve gender or race discrimination when it is their conscious object to engage in conduct of that nature or to cause such a result. People act *knowingly* when they are aware it is practically certain their conduct will cause a disparate impact along gender or racial lines. (See Model Pen. Code, § 2.02, subd. (2)(a) and (2)(b).)

The trial court's analysis seems to have departed from these equal protection standards.

First we examine events in 1946. Then we turn to 1992.

In 1946, 100 percent of the leaders of the minority community who expressed a public opinion supported the City's action in 1946. None opposed

it. The people who knew best and cared most detected no City purpose of race discrimination against them.

Our tentative view is, as a matter of law, this unanimous evidence is a litmus test dictating a finding in the City's favor. Contemporaneous and unanimous support from minority community leaders would seem to show the 1946 charter was not a hostile effort to oppress minorities. No one would seem to have a more sensitive eye or a stronger vested interest than leaders of minority communities. If they speak publicly with one supporting voice, as they did about the election in 1946, minority leaders apparently are bellwethers for voters who care most keenly about the quality of life for minorities.

Pico seems to ask us to rule a city and its electorate engaged in hostile discrimination against minorities when that city and its electorate *did what minority leaders asked*. Pico cites no case with that holding.

Our tentative view is Pico does not explain how it, today, has greater insight into the racial realities of 1946 than the unified leaders of the minority communities who, in 1946, lived in Santa Monica. Pico does not argue all these leaders were somehow tricked, out of touch, muzzled, or corrupted. Pico seems simply to suggest their views do not matter. We are inclined to take a contrary view.

Pico contends "both proponents and opponents of at-large elections understood such elections would prevent minority representation." But it seems the evidence shows there was uniform minority *support* for the City's 1946 charter change. The only newspaper critiques of the proposed charter were advertisements run by an anonymous group calling itself the Anti-Charter Committee.

Our tentative view is the work of the anonymous Anti-Charter Committee does not show a general understanding the Charter would harm minority groups. It would not seem to be evidence minority communities were divided in their support of the 1946 charter.

In 1946, the hidden identities of anonymous Anti-Charter Committee members seemed to have become a notorious issue in the City. In its ads

attacking the charter, the Anti-Charter Committee identified itself only as "a group of business men and other private citizens." A newspaper editorial, however, questioned who belonged to, and who contributed to, this "well-heeled group." This editorial contrasted the open and published "names of the nearly 200 prominent Santa Monica citizens who have endorsed the new city charter" with the secrecy surrounding the source of the Anti-Charter Committee's funding. The editorial asked if the Anti-Charter Committee's contributors included people "who sell certain supplies to the city government under contracts very favorable to them, and who are unwilling to have their names appear?" "The people of Santa Monica are entitled to know who they are." The Anti-Charter Committee apparently never responded to this editorial, so far as the record shows.

The Anti-Charter Committee's ads apparently provide insight into the Anti-Charter Committee's perspective. One of its ads, titled "Who's Going to Manage the City Manager?", states that, "[l]ike Communism, the [charter's] theory of a city-manager-operated city is wonderful. Practically it does not work out. Dictatorship never does." A different Anti-Charter Committee ad stressed systems like the one in the proposed charter "have higher tax rates and higher indebtedness" than the City's existing system. "Don't write a blank check and give it to a cause that has proved itself a spendthrift!" Another Anti-Charter Committee ad stated "[t]he first claim of minority groups is that they are making a change in the interest of 'true democracy'—this is much the same manner as the communists work from within." This same ad continued: "Do you want increased taxes, rule of the city by a few? If you don't, then VOTE NO . . . ."

Another Anti-Charter Committee ad, titled "DO YOU WANT THIS DISASTER IN SANTA MONICA?", reprinted letters to the editor from a paper in Montebello, which the ad said had a government like the proposed Freeholders' charter. The letters expressed anger at the high taxes and expenditures in Montebello. After these letters, the ad concluded: "What more could be said to prove our point that this proposed Charter will plunge Santa Monica into bitter political strife and chaos; it will mean unbearable

taxation, will establish dictatorial rule that will starve out minority groups and will throw our entire model Civil Service into the discard."

Pico puts special emphasis to one Anti-Charter Committee ad titled "MINORITY GROUPS and the Proposed Charter." This ad posited "[t]he lot of a member of a minority, whether it be in a location of not-so-fine homes, or one of race, creed, or color, is never too happy under the best of circumstances." The ad predicted the proposed charter would create a "dictatorship" of council members who would "mostly originate from North of Montana" and this "dictatorship type of government" would block access to government. "Where will the laboring man go? Where will the Jewish, colored, or Mexican go for aid in his special problems?"

Our tentative opinion is no evidence shows any "laboring man" or "Jewish, colored, or Mexican" supported the Anti-Charter Committee or its advertising or opposed the 1946 charter.

Pico's reliance on these ads seems misplaced. The Anti-Charter Committee did not seem to be an advocate for minorities or for minority voting rights. Pico claims news clippings show everyone in Santa Monica in 1946 understood at-large voting disadvantaged minorities, but the news clippings seem to show the opposite. The clippings apparently are no reason to discard the legal principle that unanimous minority support for an electoral result shows the election was not the product of racial prejudice against those minorities.

The same would seem to hold for Pico's other supposed sources of insight into the 1946 election. Our tentative view is all these arguments unacceptably assume Pico and its experts can know better than minority leaders in 1946 what was good for minorities in 1946.

We turn to 1992.

In 1992, the City appointed a 15-member commission that wrote a high-minded and comprehensive, but perplexing, report. The report was perplexing because it expressed strong dissatisfaction with the status quo but offered no consensus alternative. The report's final recommendation was to delay action and gather more information. The City Council met publicly to

mull the report. This public discussion seemed to be a model of civic engagement: substantive, open, participatory, and cordial. There did not seem to be a hint of hostility to minorities. Speaker after speaker seemed to seek ways of increasing minority empowerment. But after discussing the issue for hours the City Council remained deadlocked about the right alternative to the status quo and resolved simply to study the issue further.

Our tentative opinion is, as a matter of law, this series of actions was not purposive race discrimination. *Feeney* required proof of a *purpose* of racial discrimination. There seems to have been none.

"There is, [moreover], an added wrinkle in this case: existence in the record of a videotape capturing the events in question. There are no allegations or indications that this videotape was doctored or altered in any way, nor any contention that what it depicts differs from what actually happened. [Apparently] the videotape quite clearly contradicts the version of the story told by [Pico]." (*Scott*, *supra*, 550 U.S. at p. 378.) Pico's version of events seems "so utterly discredited" by this video as to dictate judgment for the City. (*Id.* at p. 380.) Our tentative view is the trial court "should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape." (*Id.* at 380–381.)

We have studied this 1992 videotape. It shows a public City Council meeting that began at 7:40 p.m. and ended at 2:00 a.m. It seems to contain nothing showing a purpose of race discrimination.

Out of the hours and hours of discussion, Pico focuses on a single sentence from one speaker, and argues this sentence showed the City's entire deliberation and vote was for the purpose of race discrimination. This one sentence was when Councilmember Dennis Zane said "And so, you gain the representation but you lose the housing."

Our tentative view is this sentence is not evidence the City had a purpose of discrimination against anyone. This sentence seems to contain no express, implied, or coded racial reference or purpose of racial discrimination.

An objective observer watching this video would seem to see Zane ask about the incentive that district voting creates for district representatives to

be more responsive to district voices. Zane questions whether this is a good thing. He seemed concerned this incentive would imperil a political cause he favored: affordable housing projects.

Zane supported affordable housing. Affordable housing would not seem to be a policy with a purpose of harming Latinos or minorities. For instance, Councilmember Antonio Vazquez testified Santa Monicans for Renters' Rights endorsed his successful run for the Santa Monica City Council in 1990, and he thought he probably would not have won without that endorsement.

Zane noted affordable housing projects usually engendered NIMBY protests from neighbors. Zane asked Richard Farjado and Charter Review Commissioner Doug Willis whether they would acknowledge a drawback of district voting in this context. The drawback, Zane explained, was the proclivity of district representatives to oppose affordable housing projects because of their heightened sensitivity to neighborhood protests. "A small district makes those protesters look very powerful," says Zane.

Zane seemed to make no reference to Latinos or the Pico area. He suggested he was concerned with a general tendency, not a particular district: "I'm not trying to identify a particular district."

Zane expressed concern district voting would make NIMBY voting so prevalent as to doom affordable housing projects. Richard Fajardo, a former MALDEF lawyer with experience in voting rights cases, agreed "that has been an issue and that has been a problem" because "even within the Latino community" a debate between homeowners and renters would have to continue.

In context, Zane's comment does not seem to have been a statement of discrimination against Latinos. The entire exchange, in context, seems like a substantive and cogent discussion of the pluses and minuses of a district voting system. There seem to be no coded messages of hostility to Latinos or revealing Freudian slips.

Pico claims Zane implied the Pico area was a dumping ground for undesirable low-income housing projects. Our tentative opinion is Zane

explained he was not discussing particular districts but rather the tendency of any district representative to fear the local protest Zane said typically accompanied affordable housing projects.

Our tentative view is that, when a city's commission supports minority empowerment but neither it nor the city can achieve consensus about the right alternative to at-large voting, the municipal decision to gather more information does not violate equal protection. Our preliminary analysis is that, as a matter of law, a court need go no further to vindicate this decision against the allegation of an invidious purpose.

The court will not entertain further briefing or grant a continuance based on the issuance of this tentative opinion.

//